IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 517 of 2001
With
CRIMINAL APPEAL No. 518 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KHAN MOHMAD @ KHANU ISMILE GHANCHI - Appellant(s)

Versus

STATE OF GUJARAT - Respondent

==========

Appearance :

IN CRIMINAL APPEAL NO. 517 of 2001

MR MA SAPA and MR LR PATHAN, advocates for appellant (Absent)
MR KT DAVE, A.P.P. for Respondent - State

IN CRIMINAL APPEAL NO. 518 of 2001

Mr.J.V.Mehta, advocate for appellant (Absent)
MR KT DAVE, A.P.P. for Respondent - State

==========

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE H.B.ANTANI

Date : 05/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Above-numbered appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973 (the `Code' for short) are directed against common judgment dated May 24, 2001, rendered by the learned Additional Sessions Judge, Bharuch, in consolidated Sessions Case No. 141 of 1997 and Sessions Case No.142 of 1997, which arose out of C.R.No.I.173/93 registered with Bharuch Rural Police Station, by which sole appellant in each appeal is convicted under Sections 392 & 397 read with Sections 34 & 114 of the Indian Penal Code, and sentenced to R.I. for eight years and fine of Rs.500/-, in default, R.I. for three months, for commission of offence punishable under Section 392 r.w.sections 34 & 114 IPC as well as R.I. for eight years and fine of Rs. 500/-, in default, R.I. for three months, for commission of offence punishable under Section 397 r.w.section 34 & 114 IPC. As both the appeals arise out of judgment rendered in two consolidated Sessions Cases, this Court proposes to dispose them of by this common judgment.

2. The facts emerging from the record of the case are as under :

Complainant Rabiyaben, wife of Yusufbhai Ishakbhai, is residing at village Dayadara, Jambusar Road, Taluka & District : Bharuch, with her husband and children. Her two sons named Sajid and Salim were prosecuting their studies in foreign countries at the relevant point of time, whereas her daughters were staying with her at village Dayadara. Her husband was serving in T.B.Department of Civil Hospital, Bharuch. The incident in question took place on December 23, 1993. Four days prior thereto, her son Salim had returned to her village from U.K. After taking dinner, the complainant with her son Salim, daughters Shirin and Bilkis was sitting and chit-chatting in the drawing-room of the house. At about 11.00 P.M., her two daughters retired to bed in their room. At about 11.45 P.M., she could notice human shadow through the window, which was opposite to her sitting arrangement. Immediately, her son Salim got up and opened half of the window. He noticed that a man was standing near stairs located in lawn. Salim, therefore, made inquiry as to who he was. Thereupon, the man standing on the lawn replied that he was a policeman and as he had caught a thief, who was made to stand on road, it was necessary for his father to

identify the thief. Thereupon, the complainant informed the man standing on the lawn that she would call village people and they would identify the thief. On hearing conversation between the complainant and the unknown person, husband of the complainant also came out of his room and while shouting as to who was standing outside the door, he opened the door. Thereupon, the person, who was standing outside the door, pushed the door. The complainant and her husband attempted to close the door, but, could not do so, because the person who was standing outside the door was helped by two other persons, who had accompanied him. The intruders secured forcible entry in the house of the complainant. With the help of lights which were on in the house, the complainant could see that one of the intruders was armed with gun, whereas another was armed with a revolver and a knife, and the third one had a weapon with him like a revolver. Meanwhile, on hearing hubbub, daughters of the complainant also came in the drawing-room. One of the intruders placed revolver on the head of Salim i.e. Son of the complainant and demanded money as well as gold ornaments. Salim asked the intruders not to cause harm to his mother and sister, and showed his willingness to hand over whatever he had, to the intruders. One of the intruders, who was short in structure in comparison to

others, went to the room situated on the first floor with Salim. Thereupon, the complainant also asked her daughter Bilkisben to go with Salim to see that he was not harmed. After sometime, the person who had taken Salim with him in the room situated on the first floor, came down. Thereupon, the intruders asked the complainant to take out gold bangles, gold necklace etc. and hand over the same to him. As the complainant was not inclined to part with those valuable articles, she stated that the jewellery put on by her was imitation jewellery and not real one. However, the said man asked her to take out whatever she had worn and hand over the same, and threatened that failure to hand over gold ornaments would prompt him to cause injury to her son by knife. Therefore, the complainant had no option, but to hand over gold ornaments which were worn by her. She handed over six gold bangles weighing roughly nine tolas as well as necklace weighing 2 ½ tolas and gold earrings weighing roughly ten grams. The intruders also took charging-battery, almond, pistachio-nuts, nutmeg, cinnamon, clove etc. roughly weighing one Kg. Thereafter the intruders started moving in different parts of the bungalow and picked up radio, torch with siren , gold ornaments from bed room of Salim, which he had brought for his wife etc. The intruders were talking inter-say and with the

complainant as well as members of her family in Gujarati and Hindi language. One of the intruders, who had knife with him, was thin and six feet tall having thin mustache and straight hair. He had put on a jacket and inside the jacket he had worn woolen jersey. He collected the articles which were picked up. The another intruder was speaking unchaste Hindi. He was six feet tall and slightly dark complexioned, having thick mustache. He was square faced having straight hair, and was well-built. He had put on red coloured bushirt, which was inserted . The third one who was having weapon like a revolver with him, was behaving in a manner as if he was leader of all. He was giving instructions to two others in Hindi and was reticent. He had put on *khakhi* clothes and also a jacket. He was roughly 5 ½ feet tall and well-built. He had flappy cheek and slight mustache. He had also put on monkey cap and was trying to cover his face off and on. The intruders left the house of the complainant at about 12.30 hours in the mid-night threatening the occupants of house of the complainant not to narrate the incident to any one. The complainant lodged complaint with Bharuch Rural Police Station on the basis of which C.R.No.I.173/93 was registered. The complaint lodged by the complainant was investigated by Mr.K.D.Pandya, who was then P.S.I. Of the Police Station.

He drew Panchnama of place of the incident. During the course of investigation, the appellant in Criminal Appeal No. 518 of 2001 i.e. Kher Mohmed @ Kheru Gulmohmed Sindhi was arrested on November 28, 1995. Immediately, a yadi was sent by the investigating officer to the Executive Magistrate to hold identification parade. Accordingly, identification parade was arranged by the Executive Magistrate Mr.Mohmed Yusuf Saji on the very day. At the identification parade held on November 28, 1995, complainant Rabiyaben and her daughter Bilkisben identified the appellant in Criminal Appeal No.518 of 2001 as one of the intruders, who had secured forcible entry in the house of the complainant and committed robbery. The appellant in Criminal Appeal No.17 of 2001 i.e. Khan Mohmed @ Khanu Ismail Sindhi came to be arrested on February 26, 1997. Thereupon, the investigating officer addressed a yadi to Executive Magistrate Mr.Madhavbhai Mithabhai Parmar to hold identification parade. After receipt of yadi, identification parade was held on March 6, 1997, wherein the complainant and her daughter Bilkisben identified the appellant in Criminal Appeal No. 517 of 2001 as one of the persons, who had committed dacoity in the house of the complainant. While in custody, the appellant in Criminal Appeal No. 518 of 2001 made disclosure statement

pursuant to which, handle of gun, barrel portion of gun and eight live cartridges were discovered. Similarly, pursuant to his disclosure statement, gold ornaments were seized from Bandhu Jewelers situated in Shinor Town and belonging to Amitkumar Harjivandas Odhavji. Gold ornaments were also discovered from Sanjay Chandravadan Shah of Paras Jewelers located at Ankleshwar. The handle of gun, barrel portion of gun etc. were sent to ballastic expert. On completion of investigation against accused Kher Mohmed @ Kheru Gulmohmed Sindhi, charge sheet was submitted in the Court of learned Judicial Magistrate, First Class, Bharuch, for commission of offences punishable under Sections 392 & 397 r.w.Sections 34 & 114 of the Indian Penal Code as well as Section 25(1-A) of the the Arms Act, and on completion of investigation against accused Khan Mohmed @ Khanu Ismail Sindhi, who is appellant in Criminal Appeal No. 517 of 2001, chargesheet was filed against him in the Court of learned Judicial Magistrate, First Class, Bharuch, for offences punishable under Sections 392 & 397 r.w.Sections 34 & 114 I.P.C. as well as Section 25(1-A) of the Arms Act.

3. As the offences punishable under Sections 392 & 397 of the Indian Penal Code are exclusively triable by a

Court of Sessions, both the cases were committed to Sessions Court, Bharuch for trial, where they were numbered as Sessions Case No.141 of 1997 and Sessions Case No.142 of 1997 respectively. As both the cases arose out of same Crime Register No.I.173/93, an application at Exh.9 was submitted by the learned A.P.P. on January 13, 1999 requesting the Court to consolidate both the Sessions Cases. The said application was allowed by the learned Judge and direction was given to consolidate Sessions Case No. 142 of 1997 with Sessions Case No.141 of 1997.

4. Thereafter, necessary charge was framed against the two appellants at Exh.10. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Rabiyaben Yusufbhai Ishakbhai as PW.1 at Exh.16, (2) Bilkisben Yusufbhai Patel as PW.2 at Exh.18, (3) Executive Magistrate Mr.Madhavbhai Mithabhai Parmar as PW.3 at Exh.19, (4) Panch Ibrahim Ismailbhai Patel as PW.4 at Exh.24, (5) Executive Magistrate Mr.Mohmed Yusuf Saji as PW.5 at Exh.28, (6) Panch Dharmendrabhai Rajendrabhai Savat as PW.6 at Exh.32, (7) Panch Yogeshbhai Kanaiyalal Pandya as PW.7 at Exh.33, (8) Panch Sureshbhai Budhiyabhai Vasava as PW.8 at Exh.35, (9)

Panch Balvantsinh Parbatsinh Rana as PW.9 at Exh.36, (10) Panch Mubarak Ismail Patel as PW.10 at Exh.45, (11) Panch Makbul Ibrahim as PW.11 at Exh.47, (12) panch Haji Mohmed Vali as PW.12 at Exh.50, (13) panch Pratapsinh Raisinh as PW.13 at Exh.56, (14) Amitbhai Harjivandas Soni as PW.14 at Exh.58, (15) Mahendrabhai Shankerbhai Tiwari as PW.15 at Exh.59, (16) Panch Kiritbhai Dipchand as PW.16 at Exh.60, (17) Sanjaykumar Chandravadan Shah as PW.17 at Exh.66, and (18) Investigating Officer Mr.Kaushik Dinkarrai Pandya as PW.18 at Exh.67, to prove its case against the appellants. The prosecution also produced documentary evidence such as complaint lodged by Rabiyaben at Exh.10, panchnama of identification parade held on March 6, 1997, wherein the complainant and Bilkisben identified accused Khan Mohmed at Exh.20, yadi sent by Investigating Officer, Bharuch Rural Police Station to Executive Magistrate to hold identification parade at Exh.21, panchnama of place of incident at Exh.25, yadi from P.S.I.to hold identification parade after arrest of accused Kher Mohmed at Exh.29, panchnama of identification parade held on November 28, 1995, wherein the complainant and her daughter Bilkisben identified accused Kher Mohmed at Exh.30, panchnama indicating discovery of handle of gun, barrel portion of gun and eight cartridges pursuant to disclosure statement

made by accused Kher Mohmed at Exh.46, panchnama indicating recovery of seizure of gold ornaments from Bandhu Jewelers belonging to Amitbhai Harjivandas Odhavji pursuant to disclosure statement made by accused Kher Mohmed at Exh.48, panchnama indicating recovery and seizure of gold ornaments from Paras Jewelers belonging to Sanjay Chandravadan Shah pursuant to disclosure statement made by Kher Mohmed at Exh.49, panchnama of place of incident as shown by accused Khan Mohmed at Exh.57, receipts indicating seizure of gold ornaments from Pushp Jewelers at Exhs.63 & 64, report of ballastic expert at Exh.68 etc. in support of its case against the appellants.

5. After recording of evidence of prosecution witnesses was over, the learned Judge of the trial Court explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by Section 313 of the Code. In further statement, it was claimed by each appellant that he was innocent and was falsely involved in the case. However, no defence evidence was adduced by any of the appellants.

6. On appreciation of evidence adduced by the

prosecution, the learned Judge held that it was proved by the prosecution that on December 23, 1993 at about 23.45 hours the appellants were armed with weapons such as revolver, knife etc. and had secured forcible entry in the house of the complainant. The learned Judge further held that it was proved by the prosecution that after placing the complainant and her relatives to fear of death, robbery of gold and silver ornaments as well as of cash worth Rs.70,000/- was committed by the appellants and, therefore, commission of offences punishable under Section 397 r.w.Sections 34 & 114 of I.P.C. was established. The learned Judge noticed that no previous sanction as contemplated under the relevant provisions of the Arms Act was obtained for prosecution of the appellants under Section 25(1-A) of the said Act and, therefore, the appellants were entitled to acquittal so far as alleged commission of offence punishable under Section 25(1-A) of the Act was concerned. The learned Judge further found that robbery of gold and silver ornaments and of cash worth Rs.70,000/- was established and, therefore, commission of offence punishable under Section 392 r.w.sections 34 & 114 IPC by the appellants was also established. In view of abovereferredto conclusions, the learned Judge has convicted the appellants under Sections 392 & 397 r.w.sections 34 & 114

I.P.C. and imposed sentence on them referred to earlier by judgment dated May 24, 2001, giving rise to both these appeals.

7. The perusal of the record indicates that Criminal Appeal No. 517 of 2001and Criminal Appeal No.518 of 2001 were filed by the learned advocates Mr.B.S.Patel and Ms.R.B.Patel on July 9, 2001. Thereafter, learned advocate Mr.J.V.Mehta filed his vakalatnama for the appellants in both the appeals on November 27, 2001 after obtaining `no objection certificate' from learned advocate Mr.B.S.Patel. The appeals were notified for admission hearing before Division Bench comprising K.R.Vyas and A.H.Mehta,JJ. on December 19, 2001, and after hearing the learned counsel of the appellants, both the appeals were ordered to be admitted, but, prayer for bail was refused by order dated December 19, 2001. While admitting the appeals, hearing of the appeals was expedited. The record of Criminal Appeal No.517 of 2001 further shows that learned advocates Mr.M.A.Sapa and Mr.L.R.Pathan filed Vakalatnama for the appellant in Criminal Appeal No.517 of 2001 on October 13, 2003 after obtaining `no objection certificate' from learned advocate Mr.B.S.Patel. Thus, the record would indicate that the appellant in Criminal Appeal No.517 of 2001

continues to be represented by his learned Lawyers Mr.M.A.Sapa and Mr.L.R.Pathan, whereas the appellant in Criminal Appeal No.518 of 2001 continues to be represented by his learned Lawyer Mr.J.V.Mehta. The state of affairs prevailing in these two appeals exhibit very sorry state of affairs. Mr.K.T.Dave, learned A.P.P. for the State has informed the Court that Criminal Appeal No.518 of 2001 filed by Kher Mohmed @ Kheru Gulmohmed Sindhi has become infructuous, as he has undergone sentence imposed on him and is released from Jail on June 23, 2003. This Court sent for M/s.M.A.Sapa and L.R.Pathan, learned advocates representing the appellant in Criminal Appeal No.517 of 2001 and Mr.J.V.Mehta, learned advocate representing the appellant in Criminal Appeal No.518 of 2001, but, they have not cared to remain present. Though this Court had waited for long, none has appeared on behalf of the appellants. Under these circumstances, this Court was constrained to seek assistance of the learned Additional Public Prosecutor for the State so as to see that Criminal Appeal No.517 of 2001 filed by Khan Mohmed @ Khanu Ismail Ghanchi also doses not become infructuous because of non-appearance and non-assistance of his learned advocates.

8. This Court has heard Mr.K.T.Dave, learned A.P.P.

for the State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. As none has appeared on behalf of the appellants, this Court has gone through very carefully all the points which are raised in the memorandum of Criminal Appeal No.517 of 2001 and Criminal Appeal No.518 of 2001 as well as common judgment impugned.

9. The main defence of the appellants is that they were innocent and were falsely implicated in the case. In order to determine whether the defence has substance, the Court will have to consider the testimony of the complainant and her daughter Bilkisben. The testimony of the complainant is recorded at Exh.16. In her testimony before the Court, the complainant has stated that the incident in question took place on December 23, 1993. According to her, on the date of incident, she was in front room of the house, and on that day her son Salim had come from England. The witness has mentioned that at about 10.00 P.M. she noticed shadow outside her house. The witness has informed the Court that her husband was sleeping in another room. According to this witness, she

mentioned to her daughter that shadow was seen, but her claim was dismissed by her daughter saying that shadow was of leaves of trees. The witness has stated that after sometime, window was opened by her son and he noticed a man. The witness has asserted that her son wanted to know as to who he was and reply given by the person standing in the compound of the house was that he had apprehended a thief and that it was necessary for his father to identify him. The witness has stated that in view of conversation which took place between her and her son on one hand and the person who was standing outside the house on the other, his husband got up and opened door, whereupon three persons immediately rushed inside the house. According to this witness, three persons had put on dress like policeman, but had no badge. The witness has stated that within no time, his daughters had also come to the drawing-room. What is mentioned by the witness is that one of the intruders had double barreled gun, whereas another had revolver and a knife. It is stated by the witness that the person, who had revolver, put the same on the temple of her son Salim and asked him to hand over whatever he had. The witness has maintained before the Court that as her son was scared, her son had agreed to hand over whatever he had, but, had requested the intruders not to harm her and her daughter. According

to this witness, one of the intruders had taken her son to his bed-room and at that time her daughter had also gone with them. The witness has stated that after sometime his son had come down with one of the intruders from first floor. According to this witness, thereafter she was asked to hand-over her ornaments and therefore she had said that gold ornaments were fake and of no use. The witness has stated that she was threatened by one of the intruders and therefore she had taken out four bangles roughly weighting 6 tolas, necklace weighing 2 – ½ tolas and gold-earrings roughly weighing about 10 gms. The witness has further stated that from her son, the intruders had taken cash of Rs. 7000/-, charging battery, radio, almond, pistachio nuts, nutmeg, cinnamon, cloves, weighing roughly 1 Kg. Clothes, etc. and thereafter left the house and closed the same from outside. It is also mentioned by the witness that she and her family were threatened with dire consequences before leaving the house and warned not to narrate the incident to anyone. The witness has stated that she had filed complaint and identified the appellants at identification parades held by Executive Magistrate. The witness produced her complaint at Exh. 17 on the record of the case.

10. In her cross-examination by the learned Counsel

of the appellant in Criminal Appeal No. 518 of 2001, the witness has stated that incident took place during winter season and that before the main door of the house was closed at 9.45 P.M., villagers had come to see her son. It was stated by the witness in her cross-examination that no attempt was made by her to raise shouts nor any such attempt was made by her husband and children. The witness mentioned in her cross-examination that around her bungalow there is a garden wherein trees were grown having considerable height. The suggestion made by the learned Counsel of accused Kher Mohmed that she was using only two to four rooms of the house and were not using other rooms, was denied by her. In her cross-examination, the witness has informed the Court that as her son had come from London, villagers were coming to see him. The suggestion made by the defence that her son had sold Radio in the village was emphatically denied by her. It was admitted by her that she had not given discrption of gold ornaments robbed, in her complaint nor produced documentary evidence indicating ownership of those ornaments. The suggestion made on behalf of the appellant in Criminal Appeal No. 518 of 2001 that she had not identified the appellant at the identification parade was emphatically denied by her. The further suggestion made by the defence that whole case of robbery was

concocted by her, was also denied by her.

In cross-examination by the learned Counsel of the appellant in Criminal Appeal No. 517 of 2001, the witness has stated that she had studied upto 7th standard. She admitted in her cross that there was telephone in Dayadra Outpost. However, the suggestion made to her that she had identified the accused at the instance of Executive Magistrate was emphatically denied by her. Elaborating her claim that she had identified the accused, it was stated by the witness in her cross-examination that out of four to five persons, who were made to stand in queue, she was asked to identify the accused and that she had identified the appellants as accused. The suggestion made by the defence that at the time of incident, she was scared and was therefore not able to observe features of those who had secured forcible entry in her house and committed robbery, was emphatically denied by her. This is all what transpires from the testimony of this witness.

11. On reappreciation of evidence of this witness, this Court finds that she has narrated the incident in most natural manner without making noticeable improvements and/or embellishments. Her testimony is

quite clear, categorical and implicitly reliable. Her testimony gets full corroboration from the complaint which was lodged without loss of time. In the complaint also, the description of persons who had secured forcible entry in her house and committed robbery is given. The said description is narrated by this witness during the course of recording her substantive evidence before the Court. The witness stands corroborated by the testimony of Executive Magistrate Mr Madhavbhai Mithabhai Parmar recording at Exh. 19 as well as Executive Magistrate Mr. Mohammed Yusuf Saji recorded at Exh. 28. It is relevant to notice that it could not be suggested by the learned Advocates appearing for the appellants to the witness that earlier she had opportunity of seeing the appellant / appellants and therefore, she was able to identify them at the identification parade. The evidence tendered by this witness regarding identification of the appellants at identification parade held on two different dates has almost gone unchallenged. One of the comments offered by the appellants on the testimony of this witness is that she could not describe her ornaments in her complaint nor could produce documents to indicate her ownership of those gold ornaments and therefore, her testimony should be disbelieved. As far as this criticism of the complainant

is concerned, this Court finds that she has stated weight of the ornaments which were robbed by the appellants. In every case under Sections 392 and 397 IPC, it is not absolutely necessary to give full description of ornaments. Description of ornaments such as bangles, neck-lace, earrings etc. is sufficient in order to establish robbery. Expectation that the complainant should have given account of edge border etc. of gold ornaments, is impracticable. Further, the ornaments might have been received by her as gifts or given by parents or husband. Therefore, it was not necessary for her to produce documentary evidence to establish her ownership. The fact that gold ornaments were robbed is clearly stated by her and she stands corroborated not only by her complaint, but, also by reliable testimony of her daughter Bilkisben. Further, the panchnama of place of incident produced on record at Exh.24 shows that belongings of the complainant in the house were in jumble and scattered here and there which lends credence to the prosecution case that robbery had taken place in the house of the complainant. The learned Judge of the trial Court who had advantage of observing demeanour of witnesses has believed the testimony of this witness and without good ground being pointed out the same cannot be disbelieved by this Court. On the facts and in the

circumstances of the case, this Court is of the opinion that the learned Judge of the trial Court was justified in placing reliance on the testimony of this witness for the purpose of coming to the conclusion that involvement of the appellants in the incident in question was established by the prosecution.

12. Having noticed salient features appearing from the testimony of the complainant, it would be relevant to notice the testimony of witness Bilkisben who is a daughter of complainant Rabiaben. The testimony of Bilkisben is recorded at Exh. 18. Before appreciating her testimony, it is relevant to notice that this witness is literate and passed M.A. The witness has stated that the incident in question took place at 11.45 P.M. on December 23, 1993 at their Bungalow situated in Village Dayadra on Jambusar Road. According to this witness, there were no other residential houses in the vicinity and at the time of incident, she was sleeping in her bed-room. The witness has mentioned that she heard noise coming from sitting room and therefore went to the said room and found that three persons were making attempt to enter the house, whereas that was being resisted by her parents. According to her, at the time of incident, lights in the house were on. It is mentioned by the

witness that as soon as the three intruders secured forcible entry in the house, they were asked as to why they had come. The witness has mentioned that one of the intruders was wearing shoes which normally are being worn by an army man. According to her, said person had also put on black jacket and jersey and a monkey cap in an attempt to cover his face. The witness has further stated that out of the three persons, two had big guns with them whereas the third one had a revolver and a knife with him. According to this witness, one who had put on jacket was threatening them and had asked her brother to hand-over whatever he had, whereupon, her brother had taken him on first floor. The witness has mentioned that she had also gone with her brother and that person inside the bed-room of her brother. According to this witness, her brother had handed-over Rs. 7000/- in cash to the intruder, but as the said person was not satisfied, he had ransacked mattresses and opened suit-case. The witness has stated that after she came down, she found that two persons were sitting with her parents. The witness has mentioned that one who had taken her brother on the first floor had asked her mother to hand-over gold ornaments and that her mother had handed-over gold bangles, earrings and gold necklace. The witness has mentioned that one who was tall, had

picked up clothes, almond, pistachio-nuts etc. It is also mentioned by the witness that the persons, who had entered her house had taken away tape, battery, 3-in-1 Radio, tape-recorder etc. The witness has mentioned that after collecting booty, those who had entered her house had left the same and closed the door from outside.

13. In cross-examination by the learned counsel of the appellant in Criminal Appeal No. 518 of 2001, it was stated by the witness that it was not stated by her in her police statement that when she had come down from the first floor, two persons were sitting on Sofa with her parents. The suggestion made by the defence that the persons, who had secured entry in her house, had not threatened her mother, or coerced her mother to hand over gold ornaments, is emphatically denied by her. According to her, the incident continued for about 20 minutes, but, neither she nor her parents nor her brother had raised shouts. The suggestion made by the defence that on east of her house, there is a School where new Dayadara village is established and that it was thickly populated, was accepted by her. However, the suggestion made by the defence that her brother had not handed over cash to one of the intruders and that at the time of incident she was scared and, therefore, was not able to identify any of

the intruders, is emphatically denied by her. The further suggestion made by the defence that she had not identified any one at the identification parade held by Executive Magistrates, is also emphatically denied by her.

In cross-examination by the learned counsel of the appellant in Criminal Appeal No.517 of 2001, the witness has stated that the incident took place at 11.45 P.M. According to her, her brother had come from London and, therefore, she was late in retiring to bed. The suggestion made to the witness that she was scared at the time of incident and was, therefore, not able to observe features of those who had entered her house, is emphatically denied by her.

14. On reappraisal of testimony of this witness, this Court finds that the incident is narrated by her completely, without making noticeable improvements. No major contradictions and/or omissions could be brought on record with reference to her earlier police statement. The witness stands completely corroborated by the testimony of her mother as well as that of two Executive Magistrates. It could not be even remotely suggested to the witness that before she had identified the accused at

the identification parade, she had opportunity to see any of the appellants. It is relevant to notice that neither complainant Rabiaben nor witness Bilkisben is on inimical terms with any of the appellants. Therefore, false implication of the appellants stands completely ruled out. On the facts and in the circumstances of the case, the learned Judge of the trial Court was justified in acting upon the testimony of witness Bilkisben for the purpose of fastening criminal liability on the appellants.

15. What is relevant to notice is that the description of the intruders as given by the complainant in her complaint which was lodged soon after the incident and without loss of time, completely tallies with the description of the appellants given in two panchnamas mentioning as to what transpired at identification parades. They are produced by the prosecution at Exhs.20 & 30 respectively. It is important to notice that in Para-13 of the impugned judgment, the learned Judge has observed that the accused whose description is given in the complaint and two panchnamas were produced before him in the Court and that those who were present in the Court were correctly identified by the complainant and witness Bilkisben. It is further observed by the learned Judge

that he himself had verified that the features of accused mentioned in the complaint tally with features of those who were identified by the witnesses in the Court and the features were same. This observation is not demonstrated to be incorrect on behalf of the appellants. On the facts and in the circumstances of the case, there is no manner of doubt that involvement of the appellants in the incident in question stands fully established.

16. On perusal of the grounds of challenge mentioned in the memorandum of two appeals with reference to evidence on record and the observations made by the learned Judge in the impugned judgment, this Court is of the opinion that no ground is made out by the appellants to interfere with the impugned judgment in instant appeals. The appeals are, therefore, liable to be dismissed.

For the foregoing reasons, both the appeals fail and are dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned Judgment.

[J.M.PANCHAL, J.] [H.B.ANTANI, J.]

(patel)